

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 596 of 1997

in

SPECIAL CIVIL APPLICATION No 3921 of 1997

with

SPECIAL CIVIL APPLICATION No 4097 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No.

2. To be referred to the Reporter or not? No.

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

[illegible]

5. Whether it is to be circulated to the Civil Judge?

No

PRAKASHCHANDRA CHINULAL DANI

Versus

STATE OF GUJARAT

Appearance:

1. LETTERS PATENT APPEAL No. 596 of 1997

MR BS PATEL for Petitioners
SERVED BY DS for Respondent No. 1, 3
MR PK JANI for Respondent No. 2

2. Special Civil Application No 4097 of 1997

MR BS PATEL for Petitioners
SERVED BY DS for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE S.D.PANDIT
Date of decision: 14/07/97

ORAL JUDGEMENT(per: Thakker J)

This Letters Patent Appeal is filed by the appellant against the summary dismissal of Special Civil Application No. 3921/97 by his order dated May 27,1997.

2. The appellants are the original petitioners. It appears that the main petition was filed by 23 councillors. It is the case of the appellants that in Visnagar there is a Municipality constituted under the Gujarat Municipalities Act 1963(hereinafter referred to as 'the Act'). According to the case of the appellants there are 36 councillors in the municipality. Out of 36 councillors 26 councillors are against the President of the municipality and a no confidence motion was moved. It is the allegation of the appellants in the petition that the respondent no.2 President of the Municipality was a man of respondent no.3, Dy.Minister of Urban Development and Industries. Respondent no.3 wanted to oblige respondent no.2, and as the majority members had moved no-confidence motion against respondent no.2, as a counter-blast and with a view to teach a lesson to the councillors who were against the respondent no.2, at the instance of respondent no.3 proceedings for superseding of the municipality were initiated.

3. The petitioners therefore, filed a petition in Court on May 23,1997. It appears that in the meanwhile, a notice under section 263 of the Act came to be issued on May 20,1997. A number of contentions were raised before the learned single Judge. The learned single Judge however was of the view that since the proceedings were taken under the Act, it could not be said that the Government would decide the matter without following proper procedure of law and hence the petition was summarily rejected.

3. Being aggrieved by the said order, present Letters Patent Appeal was filed which came up for hearing before the learned Vacation Judge and the learned Vacation Judge thought it fit to grant limited relief by observing that opportunity of hearing would be afforded to appellants nos 1 and 2 on behalf of the appellants. It was further observed that if any decision is taken which is against the appellants, it would not be implemented for a period of one week from the date of communication of the said decision.

4. We have heard Mr. B.S. Patel for the appellants Mr. P.K.Jani for respondent no.2 and Ms. Gajjar A.G.P. for respondents nos 1 and 3. In the facts and circumstances of the case in our opinion, it would not be proper to express any opinion one way or the other when the matter is pending before the Government under Section 263 of the Act. It was also stated before us that the hearing is over and the learned advocate for the municipality has already made representation before the authority.

5. In the facts and circumstances in our opinion, as the matter is still not decided, it will not be proper to state anything at this stage. In our view. the learned Vacation Judge has taken into account interest of all the parties and has passed just and proper order. We are, therefore, of the opinion that this Letters Patent Appeal must be disposed of by approving the observations made and directions issued by the Vacation Judge by way of interim relief that in case any order is passed, dissolving the municipality " the same shall not be implemented for a period of one week from the date of communication of the order" We accordingly direct that the State Government will inform the Chief Officer of the Municipality as well as the Vice-President of the Municipality about the order,if any passed.

6. For the foregoing reasons the Letters Patent Appeal stands disposed of. No order as to costs.

(C.K.Thakker.J)

(S.D.Pandit.J)